

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

Criminal Misc. Application No. 391 of 2006
(Old No. 10833 of 1990)

M/s Ajanta Dairy
5 Krishna Kunj, Mathura Road
Agra through its partner
Sri Lakshman Singh ... Petitioner

Vs

1. State of U.P.
2. Chief medical Officer/Local
Prescribed Authority, Dehradun ... Opposite Parties

Sri Bindesh Kumar Gupta, learned counsel for the petitioner.
Learned A.G.A. for the State

Hon'ble B.C. Kandpal, J.

Heard Sri Bindesh Kumar Gupta, learned counsel for the petitioner, learned A.G.A. for the State and perused the record.

2. The petitioner seeks for quashing of the complaint pending before the respondent No. 2 as Criminal Case No. 1168 of 1989, State Vs Naresh Chandra & others. This court on 16.03.1994 stayed further proceedings in the aforesaid criminal complaint, which is pending before the Chief Judicial Magistrate, Dehradun.

3. Brief facts of the case are that the petitioner manufactures sterilized milk cream. On 05.10.1988 the Food Inspector of the Nagar Mahapalika, Mussoorie, District Dehradun took sample from a shop of Sri Naresh Chandra who was a local distributor. The sample was kept in three sealed tins of the above sterilized milk cream having batch No. CA-16-A manufactured June 1988 of 4.50grams each. The same was sent to the public analyst who submitted his report on 19.11.1988. The said report, according to the petitioner, shows that what was taken by the Food Inspector, was a

sealed tin container on which it was printed that it contained sterilized milk cream. This further indicates that the public analyst examined the same on the standard of milk cream and not on the standard of sterilized of milk cream. On this, an order was passed by the Chief Medical Officer under Section Prevention of Food Adulteration Act.

4. The case of the petitioner is that standards have been laid down under Rule 5 of Appendix 'B' of the Rules framed under the Prevention of Food Adulteration Act. The case further is that there is no entry of the aforesaid appendix providing for the standard of quality of the sterilized milk cream. However, there is an entry A. 11.02.02 which is as follows:

“Cream excluding sterilized cream means the product of cow or buffalo milk or of a combination thereof which contains not less than 25% milk fat.”

5. Since the petitioner was only selling sterilized milk cream and not milk cream, this provision is not applicable. He has further raised other grounds, which are not necessary to refer.

6. In view of the aforesaid case as well as the facts stated in the petition, I do not find any merit in the complaint pending before the Chief Judicial Magistrate Dehradun. Accordingly, the proceedings in Criminal Case No. 1168 of 1989, State Vs Naresh Chandra & others is hereby quashed.

7. The petition under Section 482 Cr.P.C. is accordingly allowed.

(B.C. Kandpal, J.)

29.08.2006
ASWAL